



Comptroller of the Currency
Administrator of National Banks

Washington, D.C.

Corporate Decision #98-16
March 1998

**DECISION OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY
ON THE APPLICATION TO MERGE
BOATMEN'S TRUST COMPANY, ST. LOUIS, MISSOURI,
WITH AND INTO
NATIONSBANK, NATIONAL ASSOCIATION, CHARLOTTE, NORTH CAROLINA**

March 4, 1998

I. INTRODUCTION

NationsBank, National Association, Charlotte, North Carolina ("NationsBank"), has applied to the Office of the Comptroller of the Currency ("OCC") for approval to merge its affiliate, Boatmen's Trust Company, St. Louis, Missouri ("Boatmen's Trust"), with and into NationsBank under NationsBank's charter and title, under 12 U.S.C. § 215a (the "Merger").¹ NationsBank is a full-service national bank. It has its main office in Charlotte, North Carolina, and currently operates branches in a number of states, including Missouri.² Boatmen's Trust is a Missouri state-chartered trust company. It is not insured, does not take deposits (other than trust funds), and is limited to exercising fiduciary powers and related services. It provides a full range of fiduciary, investment management, and advisory services. It has its main office in St. Louis, Missouri, and operates six other offices in Missouri.

¹ The merger of Boatmen's Trust into NationsBank also requires the approval of the Federal Deposit Insurance Corporation ("FDIC") under the Bank Merger Act, since Boatmen's Trust is not an insured bank or institution. See 12 U.S.C. § 1828(c)(1)(A). That approval was granted on December 23, 1997.

² NationsBank operates branches in North Carolina, South Carolina, Georgia, Florida, Virginia, Maryland, the District of Columbia, Missouri, Kansas, Oklahoma, Illinois, Arkansas, Iowa, Texas, and New Mexico. NationsBank's branches in these states are the result of earlier transactions. See, e.g., Decision on the Application to Merge NationsBank, N.A. (South) with NationsBank, N.A. (OCC Corporate Decision No. 97-40, June 1, 1997); Decision on the Application to Merge Boatmen's Bank of Vandalia, Vandalia, Missouri, and Twenty-Two Other Affiliated Banks with NationsBank, N.A. (OCC Corporate Decision No. 97-47, June 6, 1997) ("OCC NationsBank/Missouri Decision"); Decision on the Application to Merge Boatmen's National Bank of Arkansas, Little Rock, Arkansas, and Twenty-Five Other Affiliated Banks with NationsBank, N.A. (OCC Corporate Decision No. 97-75, August 7, 1997); Decision on the Application to Merge Sun World, N.A., into NationsBank, N.A. (OCC Corporate Decision No. 98-07, January 15, 1998).

Both NationsBank and Boatmen's Trust are subsidiaries of NB Holdings Corporation, an intermediate holding company, which in turn is owned by NationsBank Corporation, a multistate bank holding company headquartered in Charlotte, North Carolina. NationsBank Corporation recently acquired Boatmen's Bancshares, Inc., and its banking and nonbanking subsidiaries.³ This merger application is part of the process of combining the recently acquired affiliated banks and trust companies into the holding company's lead bank. Boatmen's Bancshares' general business strategy had been to operate through many different bank charters, with a separate bank providing commercial banking services in each market and a separate trust company providing trust services in each state in which Boatmen's Bancshares operated. NationsBank Corporation's general business strategy is to engage in trust services through its subsidiary banks, principally NationsBank, rather than separate trust companies. Accordingly, it filed this Merger Application to combine Boatmen's Trust with NationsBank.⁴ After the Merger, NationsBank will succeed to the fiduciary appointments of Boatmen's Trust under 12 U.S.C. § 215a(e), will continue at its branches the same business formerly conducted by Boatmen's Trust, and will exercise full fiduciary powers under 12 U.S.C. § 92a. After the Merger Boatmen's Trust's offices will be closed or combined with existing branches of NationsBank, and NationsBank will provide fiduciary services at its branches in Missouri.⁵

II. LEGAL AUTHORITY

NationsBank currently operates branches in Missouri.⁶ Thus, this Merger is a merger between an existing interstate national bank and a state trust company in one of the states in which the interstate bank already has branches. Such mergers may be authorized under 12 U.S.C.

³ See *NationsBank Corporation: Order Approving the Merger of Bank Holding Companies*, 83 Fed. Res. Bull. 148 (December 16, 1996). The acquisition was effective January 7, 1997.

⁴ Boatmen's Bancshares' other commercial banks and trust companies are also being combined with NationsBank, see, e.g., decisions in note 1.

⁵ Since Boatmen's Trust does not receive deposits, pay checks, or make loans at these offices, they would not have been considered "branches" for purposes of the McFadden Act. See 12 U.S.C. § 36(j). All but one of Boatmen's Trust's offices are at the same locations as existing branches of NationsBank. The one office not at a current branch location is in the process of being closed.

⁶ NationsBank initially entered Missouri in an interstate merger transaction under the Riegle-Neal Act. See OCC NationsBank/Missouri Decision (mergers of Boatmen's Bancshares' Missouri-based commercial banks into NationsBank). In 1994, Congress enacted legislation to create a framework for interstate mergers and branching by banks. See Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Pub. L. No. 103-328, 108 Stat. 2338 ("the Riegle-Neal Act"). The Riegle-Neal Act added a new section 44 to the Federal Deposit Insurance Act that authorizes certain interstate merger transactions beginning on June 1, 1997. See Riegle-Neal Act § 102(a) (adding new section 44, 12 U.S.C. § 1831u). It also made conforming amendments to the provisions on mergers and consolidations of national banks to permit national banks to engage in such section 44 interstate merger transactions. See Riegle-Neal Act § 102(b)(4) (adding a new section, codified at 12 U.S.C. § 215a-1). It also added a similar conforming amendment to the McFadden Act to permit national banks to maintain and operate branches in accordance with section 44. See Riegle-Neal Act § 102(b)(1)(B) (adding new subsection 12 U.S.C. § 36(d)). While the Riegle-Neal Act authorizes mergers between banks with different home states, it is not applicable to this Merger between NationsBank and Boatmen's Trust because Boatmen's Trust is not insured. Section 44 applies only to mergers between insured banks.

§ 215a, and the resulting bank may retain the offices of the banks as branches under 12 U.S.C. § 36(b)(2), if the transaction involves the acquisition of branches. If the resulting bank has fiduciary powers, as NationsBank does here, it is authorized to exercise them at all its branches in all the states in which it operates, and it succeeds to the fiduciary powers and appointments of the merging banks. The OCC previously has considered such applications under section 215a on numerous occasions. The Riegle-Neal Act did not change existing authority under section 215a. This Merger does not raise new issues, but only the application of established precedent for applying section 215a to interstate national banks. Only a summary of the analysis will be presented here; earlier OCC decisions should be consulted for a more complete discussion.

A. Boatmen's Trust may be merged into NationsBank under 12 U.S.C. § 215a.

Mergers of national banks, and of state banks into national banks, are authorized under 12 U.S.C. § 215a. Section 215a provides in relevant part:

One or more national banking associations or one or more State banks, with the approval of the Comptroller, under an agreement not inconsistent with this subchapter, may merge into a national banking association located within the same State, under the charter of the receiving association.

12 U.S.C. § 215a(a) (emphasis added).⁷ In many prior decisions, both before and after the Riegle-Neal Act, the OCC has interpreted and applied this section with respect to mergers with an existing interstate national bank.⁸ We concluded that, just as for branching purposes under section 36, a national bank with its main office and branch offices in more than one state was "located" in each such state, for the purpose of mergers with other banks in that state under 12 U.S.C. § 215a (mergers) or 12 U.S.C. § 215 (consolidations). This reading is consistent with the plain meaning of the statute and its legislative history. It is also supported by judicial construction of "situated" in section 36(c) and similar locational phrases in other sections of the National Bank Act. See, e.g., Seattle Trust & Savings Bank v. Bank of California, N.A.,

⁷ A state trust company, such as Boatmen's Trust, is a "state bank" for purposes of section 215a. See 12 U.S.C. § 215b(1).

⁸ See, e.g., Decision on the Application to Merge Fleet Bank of New York, N.A. with NatWest Bank N.A. (OCC Corporate Decision No. 96-20, April 12, 1996) ("OCC Fleet/NatWest Decision"); Decision on the Application to Merge Bank and Trust Company of Old York Road into Midlantic Bank, N.A. (OCC Corporate Decision No. 95-18, May 25, 1995) ("OCC Midlantic/Old York Decision"); Decision on the Applications of Bank Midwest of Kansas, N.A., and Bank Midwest, N.A. (OCC Corporate Decision No. 95-05, February 16, 1995), reprinted in Fed. Banking L. Rep. (CCH) ¶ 90,474 ("OCC Bank Midwest Decision"); Decision on the Applications of First Fidelity Bank, N.A. (Pennsylvania) and First Fidelity Bank, N.A. (New Jersey) (OCC Corporate Decision No. 94-04, January 10, 1994), reprinted in [1993-1994 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 89,644. Decision on the Application of State Savings Bank, Southington, Connecticut, to Convert into a National Banking Association and Merge into Connecticut National Bank, Hartford, Connecticut (OCC Merger Decision No. 91-07, April 8, 1991) ("OCC Shawmut Decision") (at the time of conversion, State Savings Bank had branches in Rhode Island); Decision on the Application to Merge Girard Bank, Bala Cynwyd, Pennsylvania, into Heritage Bank, N.A., Jamesburg, New Jersey (March 27, 1984), reprinted in [1983-84 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 99,925.

492 F.2d 48, 51 (9th Cir. 1974), cert. denied, 419 U.S. 844 (1974) (an interstate national bank is "situated" in each state in which it has its main office or a branch for purposes of establishing additional branches in that state under section 36(c)). See also Ghiglieri v. Sun World, N.A., 117 F.3d 309, 315-16 (5th Cir. 1997) (same, agreeing with Seattle Trust). Any other reading could render section 215a largely unworkable in the case of interstate banks.

The Riegle-Neal Act did not alter section 215a, did not change the legal analysis and result under it, and indeed confirmed it. The statutory language and legislative history in the Riegle-Neal Act clearly contemplate that existing authority under these provisions remains in effect. The statutory changes and legislative history of the Riegle-Neal Act shows that Congress was completely aware of the OCC's prior interstate decisions. OCC decisions prior to the Riegle-Neal Act addressed interstate mergers and involved issues and analysis of sections 36 and 215a. In the Riegle-Neal Act, Congress did not change sections 36(b), 36(c), or 215a or express any disagreement with OCC's interpretation and application of them. Nor does the new section 44 authority for interstate merger transactions in the Riegle-Neal Act and the corresponding new provision authorizing national banks to engage in section 44 mergers, 12 U.S.C. § 215a-1 supplant existing merger authority possessed by national banks. Review of the statutory framework and legislative history shows that the intended operation of section 44 and section 215a-1 is that they are a separate and parallel source of authority for interstate merger transactions. They will allow interstate mergers after June 1, 1997, overriding any conflicting state laws. Section 44 permitted states to opt-out or to opt in early. But it does not supplant existing federal laws for national banks that allow some forms of interstate transaction *with a bank that is already interstate*. Indeed, the Riegle-Neal Act itself suggests that subsequent mergers in a state by a Riegle-Neal interstate national bank are to occur under section 215a. See 12 U.S.C. § 1831u(d)(2).

The Riegle-Neal Act does not supersede existing law for national banks in ways other than those explicitly set out in section 36(e), which is not relevant here.⁹ Thus, a transaction, such as this Merger, that can come under other existing authority continues to be authorized under that authority, provided it is consistent with the provision on exclusive authority for additional branches in section 36(e). Such is the case here. In this Merger, section 36(e)(1) is complied with because NationsBank already has branches in Missouri and because it is not acquiring any additional branches. Accordingly, this Merger can occur under section 215a.

⁹ That provision provides in relevant part:

Effective June 1, 1997, a national bank may not acquire, establish, or operate a branch in any State other than the bank's home State (as defined in subsection (g)(3)(B)) or a State in which the bank already has a branch unless the acquisition, establishment, or operation of such branch in such State by such national bank is authorized under this section or section 13(f), 13(k), or 44 of the Federal Deposit Insurance Act.

12 U.S.C. § 36(e)(1) (emphasis added). The relationship of the Riegle-Neal Act and section 215a is discussed further in the OCC Midlantic/Old York Decision (Part II-C) and the OCC Fleet/NatWest Decision (Part II-C).

B. Under federal law, NationsBank may exercise fiduciary powers in Missouri, and after the Merger, it succeeds to the fiduciary rights and appointments of Boatmen's Trust.

NationsBank has long been authorized by the OCC to exercise fiduciary powers under 12 U.S.C. § 92a. NationsBank initially entered Missouri in an interstate merger transaction under the Riegle-Neal Act, 12 U.S.C. §§ 215a-1 & 1831u(a), and it subsequently merged with other affiliated banks in Missouri under 12 U.S.C. § 215a. Thus, it lawfully operates branches in Missouri under 12 U.S.C. §§ 36(b)(2), 36(d) & 1831u(d)(1). See OCC NationsBank/Missouri Decision. As a national bank, it may engage in the full range of activities authorized for national banks, including fiduciary powers, at all its branches.

In addition, under other provisions added in the Riegle-Neal Act, NationsBank's branches in host states, such as Missouri here, generally are treated, with respect to the application of state law, like a national bank whose main office is in the host state. See 12 U.S.C. § 36(f)(2).¹⁰ NationsBank is authorized to engage in fiduciary activities under 12 U.S.C. § 92a. Thus, under the Riegle-Neal Act, at its branches in Missouri, it may engage in fiduciary activities, subject to Missouri state law to the same extent as such state law would apply to a national bank whose main office was in Missouri.¹¹

Moreover, section 215a also authorizes NationsBank to exercise the fiduciary capacities, and succeed to the fiduciary appointments, of Boatmen's Trust. The earlier mergers of Boatmen's Bancshares' Missouri-based banks into NationsBank were effected under 12 U.S.C. §§ 215a & 215a-1.¹² The present merger of Boatmen's Trust into NationsBank will be effected under section 215a. Section 215a expressly provides for the status, rights, and powers of the resulting bank, including fiduciary succession:

The corporate existence of each of the merging banks or banking associations participating in such merger shall be merged into and continued in the receiving association and such receiving association shall be deemed to be the same

¹⁰ Section 36(f)(2) provides in relevant part:

All laws of a host State, other than the laws regarding community reinvestment, consumer protection, fair lending, establishment of intrastate branches, and the application or administration of any tax or method of taxation, shall apply to a branch (in such State) of an out-of-State national bank to the same extent as such laws would apply if the branch were a national bank the main office of which is in such State.

¹¹ In addition, 12 U.S.C. § 92a, separately and independently, also authorizes NationsBank to engage in fiduciary business in Missouri. See OCC Interpretive Letter No. 695 (December 8, 1995). However, since NationsBank has branches in Missouri, it need not rely, in Missouri, solely on 12 U.S.C. § 92a (as interpreted in OCC Letter No. 695) for authority to conduct fiduciary business in other states.

¹² Section 215a-1 merely provides for the effectuation of Riegle-Neal interstate merger transactions in which a national bank is the resulting bank under the basic national bank merger and consolidation statute. Thus, a Riegle-Neal interstate merger transaction pursuant to section 215a-1 is subject to the provisions and procedures of section 215a.

corporation as each bank or banking association participating in the merger. All rights, franchises, and interests of the individual merging banks or banking associations in and to every type of property (real, personal, and mixed) and choses in action shall be transferred to and vested in the receiving association by virtue of such merger without any deed or other transfer. The receiving association, upon the merger and without any order or other action on the part of any court or otherwise, shall hold and enjoy all rights of property, franchises, and interests, including appointments, designations, and nominations, and all other rights and interests as trustee, executor, administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, and committee of the estates of lunatics, and in every other fiduciary capacity, in the same manner and to the same extent as such rights, franchises, and interests were held or enjoyed by any one of the merging banks or banking associations at the time of the merger, subject to the conditions hereinafter provided.

12 U.S.C. § 215a(e) (emphasis added). Thus, under section 215a(e), after this Merger, NationsBank is authorized to continue to exercise all of the listed fiduciary rights and appointments possessed by Boatmen's Trust.¹³

Accordingly, under federal law, NationsBank is authorized to exercise fiduciary powers in Missouri. After the earlier mergers with Boatmen's Bancshares' other Missouri-based banks, it succeeded to all the fiduciary rights, interests, and appointments of those banks. And, after this Merger, it will succeed to all the fiduciary rights, interests, and appointments of Boatmen's Trust.

C. NationsBank may exercise fiduciary powers in Missouri notwithstanding Missouri law that may attempt to restrict the exercise of such powers.

Missouri has several statutes that can be interpreted in such a way that, if applied to NationsBank, they would prevent NationsBank from acting in fiduciary capacities in Missouri. These statutes purport to prohibit national banks whose principal place of business is outside the state of Missouri from acting as trustee or personal representative (executor or administrator) in Missouri. See Mo. Rev. Stat. §§ 456.120 (trustee) & 473.117 (personal representative).¹⁴ This

¹³ While the merger of Boatmen's Trust into NationsBank, and fiduciary succession by NationsBank, are governed by federal law, 12 U.S.C. § 215a, we note that Missouri law regarding succession to fiduciary rights and interests by the resulting bank in a merger involving a Missouri trust company is similar. Missouri law provides that a Missouri trust company may merge into a national bank and upon the filing of a copy of the certificate of merger, the Missouri trust company terminates and "the resulting national banking association shall be considered the same business and corporate entity as, and a continuation of the corporate entity and identity of" the trust company. Mo. Rev. Stat. § 362.240(2). Missouri law further specifically provides that the resulting national bank shall succeed to all the rights and property, including fiduciary appointments, of the merging Missouri state trust company. See Mo. Rev. Stat. § 362.240(3). See also Mo. Rev. Stat. § 362.610 (provision authorizing Missouri banks and trust companies to merge with other banks, including out-of-state banks).

¹⁴ Section 456.120 provides:

raises the question whether these state statutes conflict with the authority NationsBank possesses under federal law, as set out above.

On the one hand, it is possible to interpret the state statutes to avoid conflict. First, it could be argued that Missouri's statute on mergers of state trust companies and fiduciary succession, section 362.240 (discussed in note 13), is the more specific statute in the context of a resulting bank's authority in a merger, and so it controls, as a matter of Missouri law, over the more general provisions of sections 456.120 and 473.117. Under section 362.240, a resulting national bank succeeds to the position of the merging Missouri state trust company, and therefore, it could be argued that, in the view of Missouri state law, NationsBank has the same authority to exercise fiduciary powers as Boatmen's Trust. Second, it could be argued that, in light of governing federal law's treatment of NationsBank's Missouri branches under 12 U.S.C. § 36(f)(2) as a Missouri-based national bank, NationsBank could be viewed as having its principal place of business in Missouri for purposes of sections 456.120 and 473.117.¹⁵

On the other hand, there has been no such interpretation of these state laws by state authorities.¹⁶ Moreover, the meaning of these Missouri statutes as applied to NationsBank (that is, the interpretation of the statutes as a matter of state law, without consideration of the impact of federal law on the applicability of state law) is ambiguous when taken as a whole (*i.e.*, what

No corporation, partnership or association organized under the law of a state or country other than the state of Missouri and no United States national banking association having its principal place of business outside of the state of Missouri shall have the capacity to act as trustee in Missouri except as otherwise provided by section 362.600 RSMo.

Mo. Rev. Stat. § 456.120. Section 473.117 is similar. Section 362.600 permits banks from states adjoining or next adjoining Missouri to act as fiduciary in Missouri, provided the bank's home state grants reciprocal treatment to Missouri banks.

¹⁵ In addition, in 1997 Missouri amended Mo. Stat. Rev. § 362.610 to add a provision authorizing Missouri state banks and trust companies to merge with out-of-state banks:

In the event that federal law permits out-of-state banks to merge with a national bank headquartered in Missouri on and after June 1, 1997, then any out-of-state bank or trust company may be merged or consolidated with any Missouri bank or trust company, and any Missouri bank or trust company may merge or consolidate with any out-of-state bank or trust company, upon compliance with the provisions of this chapter.

Mo. Stat. Rev. § 362.610 (as amended by H.B. No. 257, § A, effective June 24, 1997). It could be argued that, since this action permits interstate mergers into Missouri, the Missouri legislature impliedly repealed sections 456.120 and 473.117 with respect to the out-of-state banks with branches in Missouri from such mergers. Under such a construction of state law, NationsBank's conduct of fiduciary activities in Missouri would be lawful even as a matter of state law.

¹⁶ In a letter to NationsBank's local counsel, the Missouri bank commissioner, while acknowledging the statutory argument based on sections 362.240 and 362.610 and indicating his office would not object to the proposed Merger, declined to declare that Missouri law would not prevent NationsBank from acting as trustee in Missouri in view of section 456.120. See Letter from Earl L. Manning, Commissioner of Finance (January 13, 1998).

impact do sections 362.240 and 362.610 have on sections 456.120 and 473.117). And the plain meaning of sections 456.120 and 473.117 could be read to cover NationsBank -- as a national bank whose main office is in North Carolina. Thus, it is still necessary to consider federal law and to determine whether these state statutes may apply to a national bank, or are preempted, as a matter of federal law.¹⁷

In a long line of cases, the Supreme Court has considered the status of national banks, the supremacy of federal law over them, and the relationship of state law to national banks and has consistently held that state laws that conflict with federal law by preventing or impairing the ability of national banks to exercise powers granted to them under federal law are preempted. See, e.g., Franklin National Bank v. New York, 347 U.S. 373, 378 (1954); Davis v. Elmira Savings Bank, 161 U.S. 275, 283 (1896); Farmers & Mechanics' National Bank v. Dearing, 91 U.S. 29, 33-35 (1875). See generally OCC Bank Midwest Decision (Part III-A) (discussion of national bank preemption cases); Comment, State Regulation of Federally Chartered Financial Institutions, 54 Wash. L. Rev. 339, 352-62 (1979) (survey of national bank preemption cases).

Recently, the Court summarized this history, reiterating that, when a federal statute grants authority to a national bank to engage in an activity, that grant is generally interpreted as not normally limited by, but rather ordinarily preempting, contrary state law. See Barnett Bank of Marion County, N.A. v. Nelson, 517 U.S. 25, 32-34 (1996) (surveying and discussing prior cases). Moreover, even in other contexts not involving national banks, when the language of a statute reveals an explicit congressional intent to preempt state law or the structure of the statute shows the intent to preempt, courts will find contrary state laws to be preempted. Id. at 31, citing Jones v. Rath Packing Co., 430 U.S. 519, 525 (1977), Fidelity Federal Savings & Loan Association v. De la Cuesta, 458 U.S. 141, 152-53 (1982), and other cases.

¹⁷ The question of an out-of-state national bank's authority to conduct fiduciary business in a host state that is raised in this Merger Application with respect to Missouri also arose in an earlier transaction with respect to Wisconsin. See Decision on the Applications of Bank One Wisconsin Trust Company, N.A., and Bank One Trust Company, N.A. (OCC Corporate Decision No. 97-33, June 1, 1997) ("OCC Bank One/Wisconsin Decision").

In reviewing the preemption issue in this corporate application, we have not used the notice and comment procedures added in the Riegle-Neal Act for preemption determinations involving state laws in the areas of community reinvestment, consumer protection, fair lending, and establishment of intrastate branches. See Riegle-Neal Act § 114 (adding new Revised Statutes § 5244). First, the meaning of Missouri law is unclear, and it is not certain that NationsBank's proposal is necessarily inconsistent with state law; we include the preemption analysis here only in an abundance of caution. Second, the state laws at issue here are not within one of the four areas identified in section 5244. Third, even if the Missouri law did apply and even if it were within one of the four areas, a prior OCC action (the OCC Bank One/Wisconsin Decision) addressed essentially the same issue, and so this matter would qualify for the exception in section 5244(c)(1)(A). Finally, the procedure in section 5244 was not designed to duplicate a process that has its own public notice and comment requirement, such as a corporate application.

In the Riegle-Neal Act, Congress' intent to preempt state law is explicit:

(1) In General. -- Beginning on June 1, 1997, the responsible agency may approve a merger transaction under section 18(c) [12 U.S.C. § 1828(c), the Bank Merger Act] between insured banks with different home States, without regard to whether such transaction is prohibited under the law of any State.

12 U.S.C. § 1831u(a)(1) (emphasis added). The Riegle-Neal Act explicitly permits a resulting national bank in interstate mergers to retain and operate branches in the host state. See 12 U.S.C. §§ 36(d) & 1831u(d)(1). And in the Riegle-Neal Act Congress added provisions to section 36 to explicitly establish that the host state's laws apply to a branch in the host state of an out-of-state national bank "to the same extent as such laws would apply if the branch were a national bank the main office of which is in such State." 12 U.S.C. § 36(f)(2).¹⁸

Accordingly, under the Riegle-Neal Act, NationsBank is expressly authorized to have branches in Missouri. Moreover, under section 36(f)(2), Congress specifically provided that a host state's laws apply to an out-of-state national bank's branches in a host state (such as NationsBank's branches in Missouri) to the same extent as such laws would apply to a national bank whose main office was in the host state. Thus, section 36(f)(2) clearly preempts Mo. Rev. Stat. §§ 456.120 and 473.117, with respect to NationsBank's authority to engage in fiduciary business in Missouri. The federal statute directs that NationsBank's branches in Missouri are treated under state law as a national bank whose main office is in Missouri, but the state statutes would treat NationsBank as a bank whose principal office was in another state. To apply the Missouri statutes to NationsBank so as to prevent it from engaging in fiduciary activities in Missouri is to treat NationsBank differently than a national bank whose main office is in Missouri, in direct conflict with section 36(f)(2).¹⁹

¹⁸ The Riegle-Neal Act does permit the states to impose certain requirements on interstate merger transactions involving national banks (*i.e.*, age limits and filing requirements). But that only underscores the general preemptive scope of section 1831u(a); these state authorities exist only because Congress specifically granted them.

¹⁹ In addition, 12 U.S.C. § 92a, separately and independently, also would authorize NationsBank to engage in fiduciary activities at branches and non-branch trust offices in Missouri and would preempt conflicting state law. See OCC Bank One/Wisconsin Trust Decision (at pages 11-13); OCC Letter No. 695 (at pages 6-20). However, since NationsBank's fiduciary activities in Missouri are authorized under, and state law preempted by, the Riegle-Neal Act, in particular section 36(f)(2), we need not consider preemption under section 92a further here.

Furthermore, since the Missouri statutes are plainly directed against institutions from other states to prevent them from conducting fiduciary business in Missouri, they are also subject to challenge under the Commerce Clause of the Constitution, U.S. Const. art I, § 8, cl. 3, which limits the power of the states to erect barriers against interstate trade. Since the Missouri statutes are not authorized under any federal law that would shelter them from Commerce Clause scrutiny, they appear to be invalid under well-established Commerce Clause principles. See Lewis v. BT Investment Managers, Inc., 447 U.S. 27, 35-36, 42-44 (1980); OCC Bank Midwest Decision (Part III-B).

III. CONCLUSION AND APPROVAL

For the reasons set forth above, including the representations and commitments of the applicants, we find that the Merger of Boatmen's Trust into NationsBank is authorized under 12 U.S.C. § 215a, NationsBank is authorized to exercise fiduciary powers in Missouri under 12 U.S.C. §§ 92a, 36(f)(2) and 215a(e), NationsBank succeeds to the fiduciary appointments of Boatmen's Trust under 12 U.S.C. § 215a(e), and Missouri statutes that would prohibit NationsBank from exercising these fiduciary powers and appointments in Missouri are preempted by federal law. Accordingly, this Merger Application is hereby approved.

 /s/
Julie L. Williams
Chief Counsel

 03-04-98
Date

Application Control Number: 97-ML-02-0045